

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215 and 220 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, and 220 of said Code, proposes to amend Section 28.59, Title 14, California Code of Regulations, regarding take or possession of shiner perch and transport of surfperch.

Informative Digest/Policy Statement Overview

Under regulations adopted on December 7, 2001, by the Fish and Game Commission (Commission) the take or possession of all surfperch of the family Embiotocidae, including shiner perch (*Cymatogaster aggregata*), is prohibited in San Francisco and San Pablo bays (bay) during the period April 1 through July 31 (Section 28.59, Title 14, CCR). Also under existing regulations, vessels entering the bay with surfperch aboard that were taken outside of the bay must remain underway without fishing gear in the water until arriving at their home port or launch site (Section 28.59, Title 14, CCR). However, emergency action taken by the Commission in March 2002 exempts shiner perch from the prohibition on the take and possession of surfperch in the bay during the period April 1 through July 31. The emergency regulation approved by the Commission is scheduled to expire in mid to late July of this year.

Regulatory changes being proposed as a part of this rulemaking would exempt shiner perch from the current prohibition on the sport take or possession of surfperch in the bay during April 1 through July 31. Also, changes being proposed as a part of this rulemaking would eliminate the provision of Section 28.59, Title 14, CCR, that requires vessels entering the bay with sport-caught surfperch aboard (that were taken outside the bay) to remain underway without fishing gear in the water until arriving at their home port or launch site.

These changes are being proposed to ensure that the popular sport fisheries for California halibut and striped bass in San Francisco and San Pablo bays are not unduly constrained due to anglers being unable to take or possess shiner perch (for bait). Also, the regulation changes are expected to strengthen the Department's ability to enforce the seasonal surfperch closure in these bays by elimination of the provisions governing the movement of vessels entering the bays during the surfperch closure when surfperch taken outside the bay are aboard those vessels.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lakeland Village Beach & Mountain Resort, Lakeshore Room, 3535 Lake Tahoe Blvd., South Lake Tahoe, California, on Thursday, June 20, 2002, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 14, 2002, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than June 20, 2002, at the hearing in South Lake Tahoe, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Don Schultze, Marine Region, Department of Fish and Game, phone (916) 227-5670, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed changes will benefit commercial bait harvesters and bait and tackle shop owners who will be able to continue to supply shiner perch to recreational anglers in the bay during the seasonal prohibition on take and possession of surfperch there. Adopting the proposed changes will avoid expected losses of between \$35,000 and \$75,000 to bait suppliers unable to sell shiner perch to sport fishermen who could not possess them during the closure under current sport fishing regulations.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 23, 2002

John M. Duffy
Assistant Executive Director